

REMARKS

[0002] Applicant respectfully requests entry of the following remarks and reconsideration of the subject application. Applicant respectfully requests entry of the amendments herein. The remarks and amendments should be entered under 37 C.F.R. §1.116 as they place the application in better form for appeal, or for resolution on the merits.

[0003] Applicant respectfully requests reconsideration and allowance of all of the claims of the application. Claims 1-40 are presently pending. Claims amended herein are: 1, 15-20, 22, 28, and 29. No claims are withdrawn or cancelled herein. No new claims are added herein.

Statement of Substance of Interview

[0004] The Examiner graciously talked with me—the undersigned representative for the Applicant—on March 3, 2008. Applicant greatly appreciates the Examiner's willingness to talk. Such willingness is invaluable to both of us in our common goal of an expedited prosecution of this patent application.

[0005] During the interview, we discussed how the claims differed from the cited art, namely Elgamal. Without conceding the propriety of the rejections and in the interest of expediting prosecution, I also proposed several possible clarifying amendments.

[0006] The Examiner was receptive to the proposals, and I understood the Examiner to tentatively concur with the discussed clarifying claim amendments. For example, the Examiner was receptive to a proposed amendment that clarifies enforcing use of a minimum

level of security. However, the Examiner indicated that he would need to review the cited references and complete an updated search upon receiving a formal response.

[0007] Applicant herein amends the claims in the manner discussed during the interview. Accordingly, Applicant submits that the pending claims are allowable over the cited references of record for at least the reasons discussed during the interview.

**CITED ART SUBJECT TO OBLIGATION OF ASSIGNMENT TO
SAME ASSIGNEE – 35 U.S.C. § 103 (C)**

[0008] The Applicant respectfully requests that the Examiner remove U.S. Patent No. 7,079,648 to Griffin et al., first published as an application Nov. 11, 2004 as a prior art reference in prosecution of the instant application as a result of the following statement as set forth in the Manual of Patent Examining Procedure, 706.02(1)(2) II.

[0009] The instant application and the cited reference, U.S. Patent No. 7,079,648 to Griffin et al., were, at the time the invention of the instant application was made, subject to an obligation of assignment and owned, respectively, by Microsoft Corporation. Applicant respectfully submits that the cited art, U.S. Patent No. 7,079,648, only qualifies as prior art under § 102(e), and shared a common assignee with the instant application at the time the subject matter of the instant application was conceived. Thus, U.S. Patent No. 7,079,648, cited in combination under § 103(a) should be disqualified under § 103(c).

Formal Request for an Interview

[0010] If the Examiner's reply to this communication is anything other than allowance of all pending claims, then I formally request an interview with the Examiner. I encourage the Examiner to call me—the undersigned representative for the Applicant—so that we can talk about this matter so as to resolve any outstanding issues quickly and efficiently over the phone.

[0011] Please contact me to schedule a date and time for a telephone interview that is most convenient for both of us. While email works great, I welcome your call as well. My contact information may be found on the last page of this response.

Claim Amendments

[0012] Without conceding the propriety of the rejections herein and in the interest of expediting prosecution, Applicant amends claims 1, 15-20, 22, 28, and 29 herein. Applicant amends the claims to clarify claimed features in accordance with the discussion with the examiner. Such amendments are made to expedite prosecution and quickly identify allowable subject matter. Such amendments are merely intended to clarify the claimed features, and should not be construed as further limiting the claims in response to cited references.

Formal Matters

Claims

[0013] The Examiner objects to claim 17 as being of improper dependent form for failing to further limit the subject matter of a previous claim. Herein, Applicant amends claim 17, as shown above, to correct the informality noted by the Examiner.

Substantive Matters

Claim Rejections under § 103

[0014] Claims 1-40 are rejected under 35 U.S.C. §103. In light of the amendments presented herein and the discussion during the above-discussed Examiner interview, Applicant submits that these rejections are moot. Accordingly, Applicant respectfully requests that the rejections be withdrawn and the case be passed along to issuance.

Obyiousness Rejections

Lack of *Prima Facie* Case of Obyiousness (MPEP § 2142)

[0015] Applicant disagrees with the Examiner's obviousness rejections. Arguments presented herein point to various aspects of the record to demonstrate that all of the criteria set forth for making a prima facie case have not been met.

[0016] The Examiner's rejections are based upon the following references alone and/or in combination:

- **Elgamal:** *Elgamal, et al.*, US Patent No. 6,397,330 (iss. May 28, 2002);
- **Freeman:** *Freeman.*, US Patent No. 6,308,266 (iss. Oct. 23, 2001);
- **Griffin:** *Griffin; et al*, US Patent No. 7,079,648 (iss. Jul. 18, 2006); and
- **Fielder:** *Fielder; et al*, US Patent No. 5,963,646 (iss. Oct. 5, 1999)

Overview of the Application

[0017] The Application describes determining and signaling if encryption uses weak keys or algorithms in order to avoid a "false security" by intercepting cryptographic API

calls. For each such API the tool verifies the encryption parameters used and makes sure that the keys are secure enough.

Cited References

[0018] The Examiner cites Elgamal as the primary reference in the obviousness-based rejections. The Examiner cites Freeman as the secondary reference and alternately Griffin or Fielder as tertiary references in the obviousness-based rejections.

Elgamal

[0019] Elgamal describes a method and apparatus for controlling the use of cryptography such that products utilizing these controls may be exported in accordance with United States export laws, and/or imported into other countries that place additional restrictions on the use of cryptography.

Freeman

[0020] Freeman describes a technology for a single cryptographically enhanced product capable of exposing various strengths of cryptography. When first installed, the product exposes only a low-level, exportable strength cryptography that may be used in both the U.S. or overseas with a general export license. Stronger cryptography is implemented in the product, but is not exposed to the user.

Griffin

[0021] Griffin describes a tester of cryptographic service providers.

Fielder

[0022] Fielder describes a secure deterministic encryption key generator.

Based upon Elgamal

[0023] The Examiner rejects claims 1-40 under 35 U.S.C. § 103(a) as being unpatentable over Elgamal in view of the myriad of additional cited references. Applicant respectfully traverses the rejection of these claims and asks the Examiner to withdraw the rejection of these claims.

Independent Claims 1, 16, and 29

[0024] The Examiner rejects each of the independent claims based on a combination of the teachings of Elgamal (columns 5-8) and Freeman (column 10) for controlling the use of cryptography for export in accordance with United States export laws, and/or import into other countries having additional restrictions on the use of cryptography.

[0025] A fundamental difference exists between enforcing a maximum level of security for international use (as in the references) and at least a minimum level of security (as in the claims). Accordingly, Applicant asks the Examiner to withdraw the rejection of these claims.

[0026] Applicant maintains that the cited references do not disclose or teach at least the following elements of claim 1 (as amended, with emphasis added):

establishing at least one cryptography service parameter threshold **comprising a minimum level of security**;

selectively detecting a request for at least one cryptography service;
and

selectively performing at least one correctness detection action based on said requested cryptography service and said at least one cryptography service parameter threshold, wherein the at least one correctness detection action selectively performed includes **suggesting at least one alternative cryptography service, wherein the at least one alternative cryptography service comprises a cryptography service which meets the minimum level of security**

[0027] Instead, the references teach determining a maximum threshold for use and export internationally due to differences between countries in the levels of encryption which comply with each country's laws. This is fundamentally different than what is claimed.

[0028] For example, based on the references, it would be fine to have a cryptographic procedure which was essentially useless—providing little or no security.

[0029] In addition, and at least for similar reasons as discussed regarding claim 1, above, Applicant maintains that the cited references do not disclose or teach at least the following elements of claim 16 (as amended, with emphasis added):

selectively performing at least one correctness detection action based on said **requested cryptography service and said at least one minimum cryptography service parameter threshold**, wherein the at least one correctness detection action selectively performed includes **forcing use of at least one alternative cryptography service**

[0030] Instead, the references teach determining a maximum threshold for use and export internationally due to differences between countries in the levels of encryption which comply with each country's laws. This is fundamentally different than what is claimed. Accordingly, Applicant asks the Examiner to withdraw the rejection of claim 16.

[0031] Furthermore, and at least for similar reasons as discussed regarding claims 1 and 16, above, Applicant maintains that the cited references do not disclose or teach at least the following elements of claim 29 (as amended, with emphasis added):

wherein the at least one correctness detection action selectively performed includes **forcing use** of at least one other cryptography service, wherein the at least one other cryptography service comprises a **cryptography service having a higher level of security than represented by the cryptography service parameter threshold**

[0032] Accordingly, Applicant asks the Examiner to withdraw the rejection of claim 29.

Dependent Claims 2-15, 17-28, and 30-40

[0033] These claims ultimately depend upon independent claims 1, 16, and 29. As discussed above, claims 1, 16, and 29 are allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable. Additionally, some or all of these claims may also be allowable for additional independent reasons.

[0034] For example, regarding claim 15, Applicant maintains that the cited references do not disclose or teach at least “the plurality of actions” as recited in claim 15. Accordingly, Applicant asks the Examiner to withdraw the rejection of claim 15.

Dependent Claims

[0035] In addition to its own merits, each dependent claim is allowable for the same reasons that its base claim is allowable. Applicant requests that the Examiner withdraw the rejection of each dependent claim where its base claim is allowable.

Conclusion

[0036] All pending claims are in condition for allowance. Applicant respectfully requests reconsideration and prompt issuance of the application. If any issues remain that prevent issuance of this application, the **Examiner is urged to contact me before issuing a subsequent Action.** Please call/email me or my assistant at your convenience.

Respectfully Submitted,

Lee & Hayes, PLLC
Representatives for Applicant



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